



# Guideline for the preparation of administration agreements in compliance with Regulation 18 and the administration standards

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## 1. OVERVIEW

The Medical Schemes Act, 1998 (Act no 131 of 1998) ("the Act") and the Regulations thereto ("the Regulations") indicate the requirements of providing administration services to medical schemes. One of the requirements in respect of administration arrangements between medical schemes ("schemes") and administrators is that there must be a written agreement setting out the arrangements, and which is duly signed by authorised persons from both parties.

A comprehensive, and properly drafted administration agreement ensure that both parties are fully aware of their rights and obligations in terms of the agreement. It also assists both parties in the identification and resolution of any disputes with regards to the execution of the agreement.

## 2. REGULATORY REQUIREMENTS

Listed below are the specific requirements in respect of administration arrangements which must be included in each administration agreement as appropriate:

### 2.1. Regulation 18

Below is a list of the requirements as per the Regulations to the Act:

Reference	Requirements
Regulation 18	<p>"Agreement in respect of administration –</p> <ol style="list-style-type: none"> <li>(1) Prior to an administrator commencing administrative functions with regard to a particular medical scheme, the medical scheme must enter into a written agreement with the administrator in which the terms and conditions of the administration of the medical scheme are recorded</li> <li>(2) The agreement referred to in subregulation (1) must provide – <ol style="list-style-type: none"> <li>(a) for the scope and duties of the administrator;</li> <li>(b) that the administrator must, on behalf of the medical scheme, administer the business of a medical scheme in accordance with the Act and as provided for in the rules of the medical scheme;</li> <li>(c) for the basis on which the administrator is to be remunerated;</li> <li>(d) for the termination of the agreement at the instance of either party after notice in writing of not less than three calendar months and not more than twelve calendar months;</li> <li>(e) that all registers, minute books, records and all other data pertaining to the medical scheme, must at all times remain the sole property of the medical scheme concerned, and that no lien may be held over them by the administrator.</li> </ol> </li> <li>(3) Any changes to the agreement referred to in subregulation (1) must be in writing and must be effected by way of an addendum to the existing agreement or a new agreement between the administrator and the medical scheme.</li> </ol>

## 2.2. Administrator accreditation standards (Version 6)

Standard Reference	Standard description (Version 6)
1.2.1	The administration agreements are signed and clearly identify the administrator and relevant scheme as the contracting parties.
1.2.2	The commencement date and duration of the agreement are clearly provided for in the agreement.
1.2.3	The agreements confirm the scope and duties of the administrator for each specific scheme.
1.2.4	The agreements contain full details of fees payable by the medical scheme, including the basis of determination, reconciliation and payment.
1.2.5	Termination arrangements are clearly defined in the agreements, with particular regard to the termination notice period; and the timing, format and cost in respect of the scheme data to be transferred to the scheme or new administrator on termination
1.2.6	Where applicable, the agreements provide for the sub-contracting of administration functions by the administrator to another accredited administrator.
1.2.7	The agreements provide that all registers, minute books, records and all other data pertaining to the medical scheme, must at all times remain the sole property of the medical scheme concerned, and that no lien may be held over them by the administrator.
1.2.8	The agreements contain details of how confidentiality of scheme data and beneficiary personal information is to be maintained, in line with the legislative / regulatory requirements. (E.g. POPIA, MSA, National Health Act, etc.)
1.2.9	The agreements confirm that the administrator has in place the required fidelity and indemnity insurance.
1.2.10	The agreements contain details on procedures to be followed in instances of breach of contract.
1.2.11	Any amendments, including fee adjustments, to the initial agreements are in writing and signed by the parties in terms of Regulation 18(3) of the Act.
1.2.12	The service level agreement (SLA) contains details of the service to be provided, the agreed upon service level, the performance measures, and relating penalties/remedies available to the parties in case of non- performance.

## 2.3. Other

This guideline should be read with and incorporate the requirements of Circular 77 of 2019 – “Classification of and reporting on administration services – Accredited vs Other administration services”.

### 3. GENERAL CONSIDERATIONS

- The administration agreements should be comprehensive, well written and clear.
- Medical schemes must apply their minds when contracting with an administrator in terms of the administration services contracted for and the relating administration fees (Refer to Circular 77 of 2019).
- The administration agreement must be in the interest of the medical scheme's beneficiaries at all times.
- The full names and designations of the persons signing the agreements on behalf of the contracting parties must be clearly indicated.
- Each party should retain copies of the signed agreements at their registered offices.
- Detailed reporting on the administrator's performance in terms of the agreement and the detailed service level agreement should be provided to the medical scheme on a regular basis.

### 4. EXAMPLE OF ADMINISTRATION AGREEMENT AND SLA PROVISIONS

#### 4.1. Basic provisions (contents of agreement):

The following provisions are the minimum provisions that should be included in the administration agreement and whilst the CMS is not prescriptive in the exact wording to be used, unless it is wording so stated in the Act and/or Regulations, the wording used by the parties should not detract from the requirements.

##### i. Definitions/ Interpretations

Define at least the following: accreditation; the Act; administrator; auditors; beneficiary; benefit options; Board of Trustees; claims; confidential information; contributions; days means working days; effective date / date of commencement; employer; member; members' portion; personal information; Regulations; scheme rules; services; service fee(s); etc.

##### ii. Appointment of administrator

The scheme hereby appoints the administrator to administer the scheme and to provide the services set out in this agreement according to the terms and conditions of this agreement.

The administrator will at all times comply with the Act, Regulations and all lawful and reasonable instructions issued to it by the scheme.

##### iii. Accreditation of the administrator

The administrator warrants that it is accredited by the Council for Medical Scheme in accordance with Section 58 of the Act and that it will remain accredited for the duration of the agreement.

The administrator shall at all times ensure that it remains compliant with the requirements for accreditation, i.e.:

- It must be fit and proper;

- It must have the necessary systems, resources, skill and capacity to render the services; and
- It must be financially sound.

iv. Duration of agreement

*The agreement must stipulate the commencement date the duration (e.g. initial period and subsequent periods, or fixed period of say 3 years).*

v. Termination

- *The termination period should be in compliance with Regulation 18(2)(d).*
- *Termination arrangements, including transfer of data upon termination (cost, timing and format) must be in compliance with the accreditation standards, Act and Regulations.*
- *Include process to be followed from termination date until the run-off of scheme administration period has been completed.*

vi. Services to be provided by the administrator

*All services provided should be detailed in the main agreement or in an annexure thereto. The agreement must include a detailed service level agreement which includes the service levels, performance measures and penalties / recourse in case of non-performance by the administrator.*

vii. Remuneration

- *How is the administration fee calculated, and how and when is it payable? E.g. is it a fixed amount, or a rate per member per month? Is it calculated on the membership figures at the end or the beginning of a month? When will the invoice for payment be presented to the scheme and what are the payment terms? There should be a proper reconciliation of fees paid.*
- *Annual review of administration fee - specify how it will be calculated, e.g. is the cost escalation calculated using medical inflation or CPI or negotiated.*
- *Provision for review of administration fee due to unforeseen circumstances - for instance due to additional unspecified work to be performed.*
- *Specify calculation of fee during winding down or amalgamation of scheme, e.g. X% of value of claims processed.*
- *When reviewing the administration fee, the process should take into account the actual performance of the administrator and might also entail a tightening or amendment of the service levels.*

*Example:*

In consideration for the rendering of the administration services to XXX Medical Scheme in terms of this agreement, the scheme agrees to pay to the Administrator an administration fee equal to Rx per member per month, including VAT (at the VAT rate prevailing at the time).

The fee will be calculated based on the total membership base on the first day of the month to which the fee relates.

The administrator will provide a tax invoice to the scheme for payment within 7 days after the end of the

month.

viii. Direct expenditure

*An explicit statement of which costs shall be borne by each party should be made. In particular: fees payable under the Act, audit fees, bank charges, legal costs for proceedings for recovery of monies due to the scheme undertaken by the administrator, interest on authorised borrowed funds etc. might be borne directly by the scheme.*

ix. Fidelity and Indemnity Insurance

The administrator shall at its own cost take out and maintain an appropriate level of fidelity and indemnity insurance.

x. Ownership and Retention of Data, Information and Documents

*Include amongst others the following provisions:*

- All registers, minute books, records and all other data pertaining to the medical scheme, must at all times remain the sole property of the medical scheme, and no lien may be held over them by the administrator; and
- The agreed retention periods for documents, data and other information should be specified, both for the duration of the agreement and upon termination.

xi. Confidentiality

- *All data and information pertaining to the scheme, including the personal and health information of beneficiaries, is confidential and the administrator must employ appropriate and sufficient measures to ensure that confidentiality of such data and information is maintained on the administrator's systems and by the staff of the administrator;*
- *It must be specified that the confidentiality provisions will be in force in perpetuity / survive the agreement.*

*Example:*

"The parties acknowledge that all material and information relating to the affairs of the scheme which has or will come into its possession, or knowledge in connection with and/or pursuant to this agreement or the performance thereof, consists of confidential data. The parties agree that such confidential data is a valuable, unique and special asset proprietary to XXX Medical Scheme. The parties acknowledge and agree that the disclosure of the confidential data to any third party, except in the performance by the Administrator of its duties or functions in terms of this agreement and the Act, or when called upon to do so as a witness before any Court of Law, shall be unlawful and in breach of this agreement and the stipulations of the Act. The parties therefore acknowledge and agree that:

- this confidentiality clause shall be binding upon the parties and all persons employed by them including, but not limited to, professional advisors, agents, consultants, employees and staff, and the parties undertake to ensure that such parties are made aware of the confidential nature of the data;
- not to make use of the confidential data other than for the performance of the obligations in terms of

this agreement and the Act;

- to release the confidential data only to those persons who are required to know same and not to release or disclose the confidential data to any other party other than contemplated in the Act and in this agreement, unless explicitly approved by the scheme;
- to return the confidential data to the scheme upon the termination of this agreement;
- the obligations of this clause shall survive the termination of this agreement.

Notwithstanding the above, the restrictions on the use and disclosure of the confidential data shall, subject to the provisions of the Act, not apply to any of the confidential data which:

- at the date of its disclosure is in the public domain or which subsequently enters the public domain other than through unauthorised disclosure;
- was lawfully in the possession of the Administrator and not subject to any restraint as to its confidentiality prior to the time of its disclosure;
- was received by the parties from a third party which is lawfully in possession of such confidential data and is not in breach of any confidential relationship with either of the parties; and
- is required to be disclosed by any party by applicable law, regulation or Court Order.

Upon termination of this agreement for any reason whatsoever, all the confidential data in the possession of or under the control of the Administrator shall be returned to XXX within the prescribed period."

xii. Protection of Personal Information

- *Sufficient provision should be made in the agreement for full compliance with the Protection of Personal Information Act insofar as the collection, processing, storing, etc. of beneficiaries' personal and health information are concerned.*
- *The administrator must also provide for the implementation of appropriate measures and controls to prevent the loss of or damage to beneficiaries' personal and health information.*

xiii. Right of access

*State access arrangements by the scheme or members to documents under the administrator's control, subject to appropriate confidentiality considerations.*

xiv. Sub-contracting

The administrator shall not sub-contract any of the contracted administration services to any other party without the prior written consent of the scheme, which consent will not be unreasonably withheld.

Any sub-contracting arrangement shall not relieve the administrator of its responsibility for the performance of its obligations in terms of this agreement.

xv. Non-solicitation of employees

*Deals with arrangements concerning the possible solicitation of the administrator's or scheme's personnel by the other.*

xvi. Winding down

*Deals with the arrangements concerning any services the administrator may be required to continue delivering post the termination of the agreement during the winding-down period.*

xvii. Dispute resolution and Arbitration

*Mechanism for the resolution of disputes, and arbitration procedures to be followed.*

xviii. Breach of contract

*State what constitutes a breach of contract, the necessity to call for specific performance, which remedies are available to each party, which penalties may be applied, etc.*

xix. Notices & domicilia

*Each party to state its domicilium citandi et executandi, and the arrangements regarding serving of notices.*

#### 4.2. Detailed service level agreement (SLA)

A detailed service level agreement (SLA) which indicates the service levels to be achieved in respect of each of the services to be rendered, the performance measurement criteria and penalties / recourse available to the scheme in case of non-achievement of the service levels must be attached as an annexure to the main agreement.

Please refer to the published administrator accreditation standards (currently Version 6) to serve as a guide as to the detailed services to be included in the SLA. Schemes should determine the service levels but should bear in mind that member interests must be prioritised at all times. E.g. it would not be in a member's best interest to set the service level for the processing of membership application forms at 10 days from date of receipt – a service level of 2 days would be more appropriate (possibly 3 days where underwriting is required), etc.

Schemes should also ensure that the administrator has implemented appropriate measures to be able to measure and record performance against each of the detailed service levels. E.g. in the example above, the administrator must be able to record the "received" date of the application (this should be the date the application was first received by the scheme or the administrator on behalf of the scheme, and not the date the application was received by the membership clerk for capturing) as well as the processing date on the system in order to demonstrate the number of days from receipt to processed.

The administrator must provide detailed performance reports to the schemes under administration on at least a monthly basis.